THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

W.P.No.3063 of 2003

Dated 17th day of August, 2005

Between:

K.G.Sukumar, @ K.G.Sugathan,

S/o. K.G.Gopalan, aged 56 years,

Occ: Business, r/o.H.No.12-5,

Railway Station Road, Sullurpeta Mandal,

Sullurpeta, Nellore District.

…. **Petitioner**

AND

The Mandal Revenue Officer,

Sullurpeta, Nellore District.

and another …. **Respondents**

ORDER:

This writ petition has been filed by K.G.Sukumar with a prayer to issue a Mandamus declaring the action of the Mandal Revenue Officer, Sullurpeta, Nellore District and Sullurpeta Grampanchayat, represented by its Executive Officer (respondents 1 and 2 respectively) in threatening the petitioner to vacate his house bearing No.12-5, situated at Railway station Road, Sullurpeta, as illegal and arbitrary.

The case of the petitioner is that his father occupied the land and put up a thatched

house and thereafter, thatched house has been assessed to tax by the Sullurpeta Gram Panchayat and door number has also been assigned to it. Subsequently, the father of the petitioner died and he inherited the house bearing No.12-5 from his father. It is his apprehension that the respondents are contemplating to dispossess him highhandedly from the house. Hence, this writ petition.

Respondents 1 and 2 filed their counter affidavits.

It is stated in the counter affidavit of the first respondent that proceedings have been initiated under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short
'the Act') to evict the petitioner and other road margin encroachers of the Railway Feeders Road. It is trite to refer the paragraph 3 of counter affidavit, which reads as follows:

> "It is respectfully submitted that it is true that the petitioner encroached the road margin in Railway feeders road, Sullurpet some time back in 1975, constructed thatched house and paying house tax for the said house. He has also obtained electrical connection from the state Electricity Board but this does not confirm any right and also does not mean that he is in peaceful possession of the house in question. The respondents served notices under Section 7 of A.P. Land Encroachment Act, 1905 to all road margin encroachers of the Railway Feeders Road and provided alternative house sites at Gopalreddypalem village of this Mandal."

It is stated in the counter affidavit of second respondent that the house put up by the petitioner has been assessed to tax in 1981. The petitioner encroached on the road margin and put up a thatched house. It is further stated in the counter affidavit that steps will be taken to remove the encroachers after due process of law and the Government already acquired Ac.23.69 cents in the village to provide alternative sites to the encroachers. It is trite to refer the paragraphs 5 and 6 of counter affidavit, which read as follows:

> "It is submitted that, steps will be taken to remove the encroachments after following due process of law and the Government already acquired Ac.23.69 cents in the village to provide alternate sites to the encroachers and except this petitioner all the others were provided alternative sites and a site is also kept vacant to provide site to the petitioner as a part of removal of encroachments. It is the duty of the Gram Panchayat, to provide minimum amenities to the public by removing encroachments only the public places

will be protected for the public purpose.

It is submitted that, in view of the interim orders the gram panchayat has not removed the encroachments though it is a gram panchayat land and interest of justice and by providing alternative site, right of shelter is protected and the Gram Panchayat is not taking any high handed steps in this matter."

Heard the learned counsel for the petitioner, the learned Government Pleader for Revenue appearing on behalf of the first respondent and the learned Standing Counsel for Panchayats appearing on behalf of the second respondent.

The learned counsel for the petitioner submits that the petitioner has been staying in the house since 1975 and therefore, the action of the respondents in dispossessing the petitioner from the house is arbitrary and illegal.

The learned Government Pleader for Revenue appearing on behalf of the first respondent submits that proceedings have been initiated under the Act to evict all the road margin encroachers of the Railway Feeders Road including the petitioner and notice has been served on the petitioner by affixing the same to the door of the house. Since the fact remains that the petitioner has been in possession of the house bearing No.12-5 and proceedings have also been initiated by the first respondent, the first respondent is at liberty to pass appropriate orders under the provisions of the Act. The petitioner cannot be dispossessed from the house in question except in accordance with due process of law.

With the above observation, the writ petition is disposed of. No order as to costs.

_____

B. SESHASAYANA REDDY, J

17th August, 2005

isn